

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARTIN LEE FOSTER,
Plaintiff,

v.

GAVIN NEWSOM,
Defendant.

No. 2:22-cv-00396-JAM-KJN PS

ORDER

(ECF Nos. 11, 12.)

On June 3, 2022, the magistrate judge filed findings and recommendations (ECF No. 12), which were served on plaintiff and which contained notice that any objections to the findings and recommendations were to be filed within fourteen (14) days. Plaintiff filed various notices and requests, but his final notice filed on June 13, 2022 states that he has “no objections” to the court’s findings and recommendations (ECF No. 14).

Accordingly, the court presumes that any findings of fact are correct. See Orand v. United States, 602 F.2d 207, 208 (9th Cir. 1979). The magistrate judge’s conclusions of law are reviewed de novo. See Britt v. Simi Valley Unified School Dist., 708 F.2d 452, 454 (9th Cir. 1983).

The court has reviewed the applicable legal standards and, good cause appearing, concludes that it is appropriate to adopt the findings and recommendations in full. In response to plaintiff’s June 2, 2022 filing, docketed as a “request for clarification” (ECF No. 11), and his

June 10, 2022 filing (ECF No. 13), the court rejects plaintiff's assertion of misconduct in the handling of his case. According to this court's local rules, all pro se complaints filed in forma pauperis ("IFP") (like this one) go to the assigned magistrate judge for the required initial screening. See 28 U.S.C. § 1915; E.D. Cal. Local Rule 302(c)(21). If the magistrate judge concludes that the complaint does not state a claim, the magistrate judge issues findings and recommendations for the assigned district judge to review (as was done here). The defendant's absence and the plaintiff's consent are irrelevant during the IFP screening process. As explained in the findings and recommendations, the Clerk of Court erroneously issued a summons and case initiating documents immediately upon the filing of plaintiff's complaint and IFP application (ECF No. 12 at 3); however, that mistake was corrected and does not impact the magistrate judge's conclusion—adopted herein—that plaintiff's complaint fails to state a claim for relief.

Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff's request for clarification (ECF No. 11) is **DENIED** beyond the explanation provided above;
2. The findings and recommendations (ECF No. 12) are **ADOPTED IN FULL**;
3. The action is **DISMISSED** with prejudice for failure to state a claim, pursuant to 28 U.S.C. § 1915(e)(2); and
4. The Clerk of Court is **DIRECTED** to CLOSE this case.

Dated: July 18, 2022

/s/ John A. Mendez

THE HONORABLE JOHN A. MENDEZ
UNITED STATES DISTRICT COURT JUDGE